

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PAUL BARCLAY,

Plaintiff,

- against -

ZUFFA, LLC D/B/A ULTIMATE FIGHTING  
CHAMPIONSHIP

Defendant.

Docket No. 1:19-cv-8659

JURY TRIAL DEMANDED

**COMPLAINT**

Plaintiff Paul Barclay (“Barclay” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Zuffa, LLC d/b/a Ultimate Fight Championship (“Zuffa” or “Defendant”) hereby alleges as follows:

**NATURE OF THE ACTION**

1. This is an action for copyright infringement under Section 501 of the Copyright Act and for the removal and/or alteration of copyright management information under Section 1202(b) of the Digital Millennium Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of professional mix martial artist Aaron Jeffery, owned and registered by Barclay, a professional photographer. Accordingly, Barclay seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

**JURISDICTION AND VENUE**

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant reside and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

### **PARTIES**

5. Barclay is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 415 Burlington Avenue, Ontario L7S 1R3 Canada.

6. Upon information and belief, Zuffa is a foreign limited liability company duly organized and existing under the laws of the state of Nevada with a place of business at 11 Madison Avenue, New York, New York 10010. Upon information and belief, Zuffa is registered with the New York State Department of Corporations to do business in New York. At all times material, hereto, Zuffa has operated their Twitter page at the URL: [www.Twitter.com/UFC](https://www.Twitter.com/UFC) and has operated their YouTube Page (the “Websites”).

### **STATEMENT OF FACTS**

#### **A. Background and Plaintiff’s Ownership of the Photograph**

7. Barclay photographed professional mix martial artist Aaron Jeffery (the “Photograph”). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Barclay then licensed the Photograph to Aaron Jeffery for personal use who put it on his Instagram page with a photo credit to “Paul Barclay” to the right of the Photograph. A screenshot of the Photograph on Aaron Jeffrey’s Instagram account is attached hereto as Exhibit B.

9. Barclay is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

10. The Photograph was registered with the United States Copyright Office and was given registration number VA 2-165-916.

**B. Defendant's Infringing Activities**

11. Zuffa ran the Photograph on the Websites. Screenshots of the Photograph on the the Websites are attached hereto as Exhibit B.

12. Zuffa did not license the Photograph from Plaintiff for its Websites, nor did Zuffa have Plaintiff's permission or consent to publish the Photograph on its Websites.

**FIRST CLAIM FOR RELIEF**  
**(COPYRIGHT INFRINGEMENT AGAINST ZUFFA)**  
**(17 U.S.C. §§ 106, 501)**

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

15. Zuffa infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Websites. Zuffa is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Zuffa have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

**SECOND CLAIM FOR RELIEF**

**INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION AGAINST ZUFFA**  
**(17 U.S.C. § 1202)**

19. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-18 above.

20. Upon information and belief, in its article on the Websites, Zuffa copied the Photograph from Aaron Jeffrey's Instagram page which contained a gutter credit next to the Photograph stating "Paul Barclay" and intentionally and knowingly removed copyright management information identifying Plaintiff as the photographer of the Photograph.

21. The conduct of Zuffa violates 17 U.S.C. § 1202(b).

22. Upon information and belief, Zuffa falsification, removal and/or alteration of the aforementioned copyright management information was made without the knowledge or consent of Plaintiff.

23. Upon information and belief, the falsification, alteration and/or removal of said copyright management information was made by Zuffa intentionally, knowingly and with the intent to induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph. Zuffa also knew, or should have known, that such falsification, alteration and/or removal of said copyright management information would induce, enable, facilitate, or conceal their infringement of Plaintiff's copyrights in the Photograph.

24. As a result of the wrongful conduct of Zuffa as alleged herein, Plaintiff is entitled to recover from Zuffa the damages, that he sustained and will sustain, and any gains, profits and advantages obtained by Zuffa because of their violations of 17 U.S.C. § 1202, including attorney's fees and costs.

25. Alternatively, Plaintiff may elect to recover from Zuffa statutory damages pursuant to 17 U.S.C. § 1203(c) (3) in a sum of at least \$2,500 up to \$25,000 for each violation of 17 U.S.C. § 1202.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Zuffa be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. The Defendant Zuffa be adjudged to have falsified, removed and/or altered copyright management information in violation of 17 U.S.C. § 1202.
3. Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photograph;
4. That, with regard to the Second Claim for Relief, Plaintiff be awarded either:
  - a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's falsification, removal and/or alteration of copyright management information; or b) alternatively, statutory damages of at least \$2,500 and up to \$ 25,000 for each instance of false copyright management information and/or removal or alteration of copyright management information committed by Defendant pursuant to 17 U.S.C. § 1203(c);
5. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
6. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 1203(b);

7. That Plaintiff be awarded pre-judgment interest; and
8. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York  
September 17, 2019

LIEBOWITZ LAW FIRM, PLLC

By: /s/Richard Liebowitz

Richard P. Liebowitz

11 Sunrise Plaza, Suite 305

Valley Stream, New York 11580

Tel: (516) 233-1660

RL@LiebowitzLawFirm.com

*Attorneys for Plaintiff Paul Barclay*